

**MAINE DEPARTMENT OF HEALTH & HUMAN SERVICES  
PURCHASE OF SERVICE RULE**

**SECTION 1. INTRODUCTION**

In 2003, pursuant to P.L. 2003 c. 689, the 121<sup>st</sup> Legislature created a new Department of Health and Human Services (hereafter, "the Department"), charged with the mission of providing health and human services to the people of Maine. 22-A M.R.S.A. § 101 *et. seq.* The Department is the successor in every way to the powers, duties and functions that were formerly assigned to the Department of Human Services (DHS) pursuant to 22 M.R.S.A. § 1 *et. seq.*, and to the Department of Behavioral and Developmental Services (BDS) pursuant to 34-B M.R.S.A. § 1001 *et. seq.*

This rule establishes the Department's policies governing its purchase of services. It repeals and replaces the following rules:

Maine Department of Human Services:

- 10-149 CMR Ch. 3 Bureau of Elder & Adult Services Fiscal Policies & Procedures Manual
- 10-144 CMR Ch.102 Bureau of Medical Services Purchase of Service Rules
- 10-148 CMR Ch. 5 Bureau of Child & Family Services Purchase of Service Policy Manual
  - Section II (A), (B), (E), (F)
  - Section III
  - Section IV (A), (B), (C), (D), (E), (G)
- 10-144 CMR Ch. 608 Bureau of Income Maintenance Purchase of Service Contracts

Maine Department of Behavioral and Developmental Services

- 14-118 CMR Ch. 1 Guidelines for Grants and Purchase of Service Agreement
  - Section 2(B)(16)(n), (q), (t), (u), (v)
  - Section 2(B)(17)
  - Section 2(B)(8)(b), (e)
  - Section V
  - Section VI
- 14-191 CMR Ch. 9 Fiscal Accountability Rules and Exceptions to Federal OMB Circulars
  - Ch. 45 Service Agreement
- 14-193 CMR Ch. 3 Community Mental Health Service Agency Standards for Fiscal Accountability

14-197 CMR Ch. 1    Funding Guidelines for Community Based Mental  
Retardation Services

BDS Policy Manual    02 AP 10 Contract Management

**SECTION 2. AUTHORITY:** 22 M.R.S.A. §§ 12 & 42; 22-A M.R.S.A. § 203(4) and § 205(2)

**SECTION 3. PURPOSE AND APPLICABILITY; LIMITATION**

This rule establishes the basic standards governing the purchase of services provided on behalf of the Department, which are supported by State, Federal or other funds administered by the Department. It applies to all agreements, including contracts, grants and cooperative agreements for the purchase of services from community agencies, individuals, institutions of higher education, and other providers, as authorized by State or Federal laws and rules. Services may be purchased by the Department only within the limits of available funding.

**SECTION 4. DEFINITIONS**

**1. Agreement** means a legally binding written document between the Department and a provider, that specifies the terms and conditions under which services will be provided, and identifies the mutual obligations of each party. An agreement may take the form of a contract, grant or cooperative agreement, depending on its purpose. The specific form of any agreement may vary, depending upon its purpose, or upon the amount of funds expended. Purchase of service agreements must conform to Division of Purchases requirements, and to State performance-based contracting requirements.

**2. Agreement Administrator** means a Department staff person assigned the responsibility for developing, negotiating, and monitoring the performance of any agreement.

**3. Department** means the Maine Department of Health and Human Services (DHHS).

**4. Division of Purchases** means the division of the Department of Administration and Financial Services (DAFS) in the Bureau of General Services, with responsibility for the administration of purchases by State agencies. The Department's purchase of service agreements must conform to Division of Purchases requirements. Website: <http://www.Maine.gov/purchases/>

**5. Provider** means an individual, a community agency, or other business entity that enters into a contractual agreement with the Department to provide services.

**6. Sub-agreement** means a legally binding agreement between a provider and another entity, the purpose of which is to assist the provider in carrying out the terms of an Agreement with the Department. Sub-agreements must be approved by the Department.

## **SECTION 5. CONDITIONS FOR PURCHASING SERVICES**

1. An agreement to purchase services shall be entered into at the sole discretion of the Department. However, the Department may elect to purchase services within the limits of available funding when:

A. the Department has determined that the need to purchase services exists because:

- (1) client services from a provider or individual will exceed \$2,500 per year per provider or individual; or
- (2) purchased services will aid the Department in its operations, or
- (3) MaineCare regulations require the execution of an agreement as an authorization to bill MaineCare for services; and

B. the services to be purchased do not duplicate existing services; and

C. the services to be purchased comply with the intended purposes of the State, Federal, or other funding source, and have been approved as part of the Department's financial allocation plan.

## **SECTION 6. PROVIDER REQUIREMENTS**

Providers offering to provide services to the Department through purchase of service agreements must be individuals or entities authorized to do business in Maine, and, where applicable, be in "good standing" status with the Secretary of State; or be public or educational entities as specified by the funding source. Providers must maintain complete and accurate fiscal and programmatic records consistent with State and Federal standards, comply with applicable licensing or certification standards, perform the terms of the agreement consistent with State performance contract requirements, cooperate with the Department in carrying out the terms of the agreement, and promptly resolve problems under the agreement as they may from time to time arise.

## **SECTION 7. REQUEST FOR PROPOSALS (RFP)**

As needed, the Department may select providers by issuing a Request for Proposals (RFP). An RFP is a document listing the scope of work, requirements of the state and all evaluation criteria for a service needed by the state. The Department follows

the rules for the RFP process as established by the Division of Purchases (See Department of Administrative and Financial Services, Division of Purchases, “Rules for the Purchase of Services and Awards,” 18-554 C.M.R. Ch. 110, § 2).

## **SECTION 8. AGREEMENT TERMS, ENTIRE AGREEMENT**

In all cases, the specific terms of an executed written agreement between a provider and the Department determine the rights and responsibilities of the parties, and establish the entire agreement of the parties. Purchase of service agreements shall be in such form as the Department may direct, and the Department may make use of standard forms and riders. Revisions and amendments are within the sole discretion of the Department, subject to the timely submission of information by the Provider as described in the agreement. All revisions and amendments must be in writing and signed by the parties.

## **SECTION 9. AGREEMENT APPROVAL PROCESS AND FUNDING**

1. The Department shall designate an Agreement Administrator for each proposed purchase of service agreement. The Agreement Administrator will be responsible for the negotiation, approval and monitoring of the agreement. The Agreement Administrator shall have the authority to take action on behalf of the Department in carrying out the terms of the agreement. Depending upon the circumstances, this authority may be subject to review and approval by the Commissioner or by the designee.

A. All agreements approved for funding by the Department are subject to review and approval by the Commissioner or his/her designee.

B. Where applicable, unless otherwise waived, agreements also shall require review and approval by the Department of Administrative and Financial Services.

C. No agreement payments shall issue prior to approval and encumbrance. Payments must be used during the term of the agreement only, and may not be used to pay for costs incurred prior to or subsequent to the term of the agreement.

## **SECTION 10. AGREEMENT CONTENTS**

Purchase of service agreements with the Department shall consist of such forms and riders as the Department may designate. Form and content may vary depending on the Department's program needs and the services purchased. The Department's agreements shall conform to State standard agreement requirements established by the Department of Administrative and Financial Services, Bureau of General Services, as applicable. For example, in cases in which a standard state agreement is appropriate, the agreement may contain such standard Riders as Rider A (Specifications of the Services to

be provided); Rider B (Method of Payment and other Provisions); Rider C (Exceptions to Rider B, if applicable); Rider D (Additional Provisions, if applicable); Rider E (Additional Program Requirements, if applicable); Rider F (Budget, Settlement Form, Compliance Form, if applicable); and any other riders required by the Department.

## **SECTION 11. SUB-AGREEMENTS**

A provider is wholly responsible for ensuring that the terms and conditions of its agreement are met, even if some services are provided through sub-agreements approved by the Department. The Department will consider the provider to be the sole point of contact regarding any matters under the agreement.

## **SECTION 12. AGREEMENT ADMINISTRATION**

The Agreement Administrator shall monitor the provider's compliance with the terms of the agreement, including but not limited to timeliness, completeness and accuracy of all fiscal expenditure reports, service delivery reports, performance based contracting reports and all other reports required under the Agreement. The provider shall provide all compliance documentation, including all reports required by the agreement, for the Administrator's review. Monitoring and administration may include site visits and program reviews. The Department may require the provider to take corrective action if, in the Department's determination, corrective action is required for compliance.

## **SECTION 13. PAYMENT AND SETTLEMENT**

The payment terms of the agreement shall control amounts and disbursements of funds. All payments shall be subject to the availability of funds from State and Federal appropriations. Payment shall be authorized only when the agreement is approved as described in Section 9. Settlement of accounts at the close of the agreement period shall be governed by the terms of the agreement.

## **SECTION 14. AGREEMENT RENEWAL**

Renewal of a purchase of services agreement is in the sole discretion of the Department. Each agreement period is solely defined by the period of time identified in the agreement, and may not be renewed without a written agreement.

## **SECTION 15. ENFORCEMENT AND CHOICE OF LAW**

Purchase of service agreements are legally binding contractual documents enforceable under the laws of Maine.